



CITY OF DOVER

CITY OF DOVER - ORDINANCE

Agenda Item#:

Ordinance Number: **O – 2020.11.18**
Ordinance Title: Health and Sanitation
Chapter: 89
Section: 14

EMERGENCY ORDINANCE

The City of Dover Ordains:

1. DECLARATION OF EMERGENCY AND PURPOSE

Pursuant to City Charter C3-9, an emergency exists due to the recent, significant rise in infections related to the ongoing pandemic caused by the novel coronavirus (SARS-CoV-2), which can lead to the serious medical condition known as Coronavirus Disease 2019, or COVID-19. In recent weeks, the United States, the State of New Hampshire, and Strafford County have seen a significant rise in new infections, as outlined further in the background section of this ordinance. There is a shift to more indoor activities due to the weather as well as the upcoming holiday season. There is no approved or generally available vaccine at this time, nor is one expected for general use in the population until some point in 2021. For these reasons, the City Council finds that an “emergency” exists warranting further emergency action in the form of this ordinance. The purpose of this ordinance is to amend Chapter 89 Health and Sanitation to require the wearing of face coverings to help reduce the spread of SARS-CoV-2 in the City of Dover. General face coverings use has been shown as an efficacious measure in reducing the community spread of SARS-CoV-2. The City Council finds these facts, as well as the facts and other information set forth in the background of this ordinance, as the underlying reasons for this ordinance.

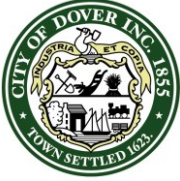
2. AMENDMENT

Chapter 89 entitled “Health and Sanitation” is hereby amended by adding Section 89-14, “Wearing of Face Coverings in the City of Dover” as follows:

a. THE FOLLOWING ARE ADDED:

Section 89-14 Wearing of Face Coverings in the City of Dover

- A. As used herein in this section, “face covering” means a covering made of cloth, fabric, or other soft or permeable material, including surgical masks, without holes, that covers at a minimum the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made or homemade and improvised from ordinary household material.
- B. Required Face Coverings: The following persons shall wear a face covering in the following circumstances, unless exempted below:
1. In any indoor or outdoor space which is accessible to others or open to the public, in which a physical distancing of six (6) feet between people who are not members of the same household is not or cannot be maintained.
 2. All persons entering or queued to enter, remaining in, or exiting from any business, including without limitation any outdoor area where business of any sort is conducted, work site, or government building.



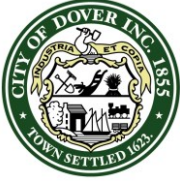
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3. All persons entering or queued to enter a restaurant or establishment serving alcoholic beverages for the purpose of picking up food or beverage for takeout or any other purpose.
4. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a coworker or a customer.
- C. No owner, manager, supervisor or employee of any business or property shall provide goods or services to any person not complying with face covering requirements of this section, or any other face covering requirements now in force or hereafter adopted. No business or property owner, and no employee of any business, shall permit a person to remain on its premises in violation of these requirements.
- D. Employers, event organizers, and social hosts shall be responsible for ensuring all employees, attendees, and/or guests comply with the requirements set forth in this section. In the event an employee, attendee, and/or guest of an event or social gathering is in violation of this section, the employer, event organizer or social host shall also be subject to penalties for violation of this section.
- E. Exemptions: The following persons shall be exempt from the requirements of this section:
 1. Children under 2 years of age.
 2. Any person who has a medical condition that prevents the person from being able to wear a face covering.
 3. Persons dining indoors or outdoors at a restaurant may remove face covering while at their table, though they shall wear a face covering whenever away from their table including when entering, using, or leaving the restroom of a restaurant.
 4. Persons receiving personal care services including hair cutting and other hair treatment, facials, tattooing, piercing, and similar services may remove their face covering during any limited period during which the face covering actually interferes with the performing of the service.
 5. Persons at places of amusement, including bingo halls, bowling alleys, charitable gaming facilities, and similar places where food and drink is served secondarily to the main activity may remove face covering while actually engaged in eating or drinking and not at other times.



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6. Persons engaged in utilizing cardio, strength training, and other gymnasium equipment may remove their face covering during the actual use of such equipment provided a distance of six (6) feet from any other person is maintained.
7. A person may temporarily remove a face covering when in a business if obtaining a service or product that requires verification of the person's identity or age.
- F. To the extent anything in this section conflicts with stricter requirements set forth in federal law, state law, or the Governor's Emergency Orders on face coverings, such stricter requirements shall supersede the requirements of this section.
- G. The requirements of this section shall be administered and enforced by the Dover Police Department, under the supervision of the Office of the Chief of Police. Any person in violation of the requirements of this section shall be subject to a fine as provided in § 89-11 and the City Fine Schedule.
- H. The requirements of this section shall only be in effect for sixty days from the date of enactment.

3. SEVERABILITY

Each subparagraph of this ordinance and new Code section 89-14 is an independent section, and the holding of any part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other subparagraphs or parts thereof.

4. TAKES EFFECT

This ordinance shall take effect upon passage, and shall remain in effect for only sixty days from the date of passage in accordance with City Charter C3-9.

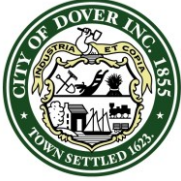
AUTHORIZATION

Approved as to Funding: Daniel R. Lynch
Finance Director

Sponsored by: Mayor Robert Carrier
Councilor Deborah
Thibodeaux, Ward 3

Approved as to Legal
Form and Compliance: Joshua M. Wyatt
City Attorney

Recorded by: Susan M. Mistretta
City Clerk

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DOCUMENT HISTORY:

First Reading Date:	Public Hearing Date:
Approved Date:	Effective Date:

DOCUMENT ACTIONS:

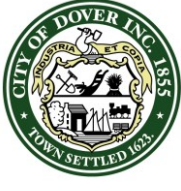
VOTING RECORD		
Date of Vote:	YES	NO
Mayor Robert Carrier		
Deputy Mayor Ciotti		
Councilor Michelle Muffett-Lipinski, Ward 1		
Councilor Deborah Thibodeaux, Ward 3		
Councilor Joshua Manley, Ward 4		
Councilor Dennis Shanahan, Ward 5		
Councilor Fergus Cullen, Ward 6		
Councilor John O'Connor, At Large		
Councilor Lindsey Williams, At Large		
Total Votes:		
Ordinance does does not pass.		

ORDINANCE BACKGROUND MATERIAL:

The condition known as Coronavirus Disease 2019 (“COVID-19”), which is caused by the novel coronavirus (SARS-CoV-2), is presently affecting individuals throughout the United States and the State of New Hampshire. COVID-19 is potentially fatal, predominantly but not exclusively for those at high risk. Continuing study into COVID-19’s non-fatal effects increasingly reveals potential organ damage, including long-term irreversible damage, to various human organs, including the lungs, heart, and possibly the brain and other organs or organ systems.

On March 13, 2020, Governor Christopher Sununu issued Executive Order 2020-04, declaring a state of emergency in New Hampshire with respect to COVID-19 (novel coronavirus). The Governor, the federal Centers for Disease Control and Prevention (“CDC”), President Trump, and the World Health Organization (“WHO”) have issued or recommended further restrictions aimed at minimizing exposure to the novel coronavirus, including social distancing, hygienic practices (*e.g.*, handwashing), and, now, face coverings.

Having had the opportunity to study the virus for several months, the CDC has confirmed that the virus spreads mainly from person to person through respiratory droplets produced when an infected person

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coughs, sneezes, talks, or raises their voice (*e.g.*, shouting, chanting, singing). The CDC has also confirmed that a significant number of those infected with the virus are either asymptomatic or pre-symptomatic, yet can still readily transmit the virus to others unknowingly.

Multiple independent studies confirm, and agree, that widespread wearing of face coverings helps drastically reduce transmission of the virus to others by (i) reducing the amount of viral load exhaled or expelled into the air surrounding an infected person, and (ii) reducing the distance which that viral load travels or can travel. The CDC's current guidance concerning face coverings can be found at the following website: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>. The WHO's guidance and information can be found at the following website: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks>. Recently issued scientific analysis further confirms that face coverings block the exhaled virus, as well as provide filtration for personal protection of the wearer. *See* National Center for Immunization and Respiratory Diseases, *Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*, (Updated November 10, 2020) (collecting studies), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>.

It is clinically established that the best means of slowing the spread of a virus is through minimizing close personal contact with individuals in a public environment, social/physical distancing, covering one's mouth and nose by wearing a face covering, and frequent and proper hand washing. Guidance from medical experts across the country strongly recommends the wearing of face coverings when in public, and particularly where a person is not able to maintain adequate distance from another person. The CDC recommends that children under the age of 2 not be required to wear face coverings. Currently, a number of communities in New Hampshire have enacted face covering requirements, including Concord, Durham, Enfield, Hanover, Keene, Lebanon, Nashua, Newmarket, Portsmouth, Plainfield, and Plymouth.

Recently, the United States generally, and New Hampshire specifically, have seen a dramatic increase in SARS-CoV-2 infections and exponential growth. For the preceding three weeks, the data show the following increasing trend in Strafford County alone:

- 73 new positive test results with 42 active cases 9/29-10/13
- 88 new positive test results with 79 active cases 10/14-10/27
- 286 new positive test results with 256 active cases 10/28-11/10

New Hampshire continues to see daily new record numbers of infections, with 462 new cases reported on Friday, November 13, 2020. There is an expectation of increased social interaction due to the upcoming holidays.

The test positivity rate for New Hampshire has historically been around or under 1%, but has recently increased to nearly 3% statewide and higher in Strafford County specifically.

Wentworth Douglass Hospital has provided data mirroring increasing infections and hospitalizations locally:

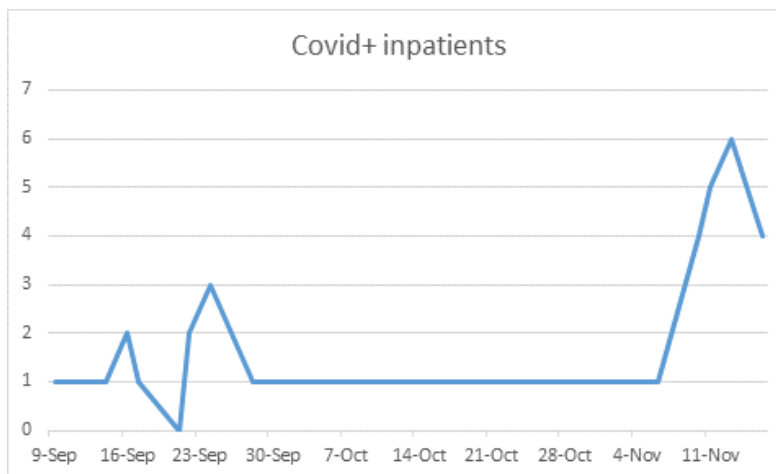
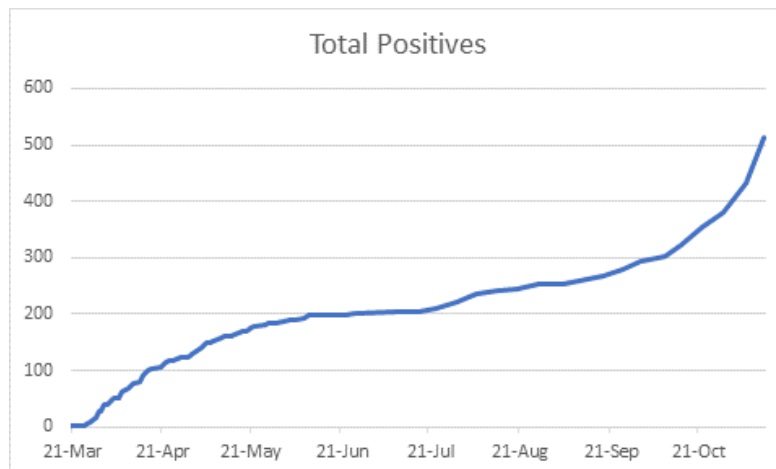
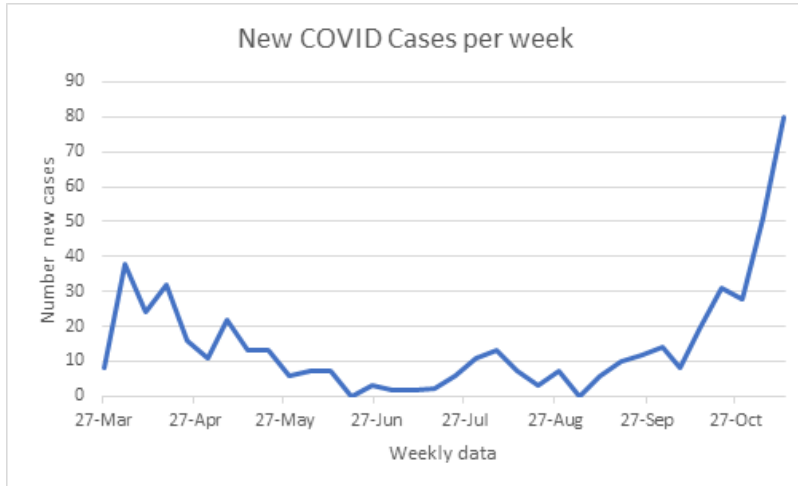


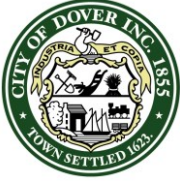
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There is no reason to believe the upward trend in cases and positive rate will reverse in the near future. The State has had to prioritize contact tracing for certain populations given the recent rising number of infections and the State's resources. While vaccine trials continue and some preliminary results appear promising, there is no approved vaccine in the United States, nor is any expected to be ready for general distribution in the near future. And, it appears any vaccine that may be eventually approved would be distributed first to priority, at-risk populations and not to the general population until later in 2021. Accordingly, there is a significant need to take other measures prevent the spread of the virus. These factors, combined with a general move to indoor activities as the weather changes into late fall and winter and widespread social and family gatherings related to travel anticipated in this upcoming holiday season, prompt the Council to take urgent, emergency action.

The City Council, in consultation with State and local health officials, the City Manager, the Emergency Management Director (Chief Haas), and other City officials, has determined that to reduce the spread and infection of the novel coronavirus (SARS-CoV-2), it is in the interest of the health and safety of all Dover citizens, residents, visitors, businesses, and employees of and within our City to require the wearing of face coverings as outlined in this ordinance.

The City Council has statutory authority to make bylaws and regulations for the well-being of the City, *see* RSA 47:17, XV. New Hampshire Courts have recognized the COVID-19 pandemic justifies the Governor's declaration of a State of Emergency, state restrictions, and local restrictions, including face coverings. *See Binford, et. al. v. Sununu*, 217-2020-CV-00152 (Merrimack Super. March 25, 2020); *Devine v. Sununu*, 218-2020-CV-00602 (Rockingham Super. June 18, 2020); *Cooper v. Sununu*, 2020-CV-00266 (Hillsborough Super., South July 13, 2020); *Athens v. Sununu*, 213-2020-CV-00104 (Cheshire Super. July 14, 2020).

The City Council also has authority pursuant to the City Charter, C3-9, to enact emergency ordinances. That section is reproduced below for reference:

C3-9 Emergency Ordinances.

To meet a public emergency affecting life, health, property, or the public peace, the Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in Subsection A. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of those present and voting shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance, except one made pursuant to Subsection A, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still



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exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

A. Emergency appropriations. To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations as part of an emergency ordinance. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such emergency ordinance, authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals thereof occurring in any fiscal year shall be paid not later than the last day of the fiscal year next succeeding the year in which the emergency appropriation was made.

B. Recording. All ordinances, including any amendments thereto, shall be recorded in full, uniformly and permanently, by the City Clerk, and each ordinance so recorded shall be approved to form by the City Attorney, authenticated by affixing the signatures of the Mayor, City Clerk, City Attorney and City Seal and kept on file in the office of the City Clerk. The City Clerk, under the direction of the City Manager, shall be responsible for the systematic indexing, printing, publication and maintenance of the ordinances of the city. Copies of any or all ordinances shall be available to the public, and the City Clerk may charge a nominal cost to help defray the printing costs.

Because COVID-19 presents a clear danger to the general population, it greatly benefits the community for the City Council to take this emergency measure requiring the wearing of face coverings in certain situations to protect the public health. As mentioned, recent data shows a significant increase in SARS-CoV-2 infections nationally and in Strafford County, which is only expected to further increase with more indoor activities and the upcoming holidays. Moreover, requiring face coverings is also expected to help not only public health, but also the City of Dover's economic well-being, which could or would be threatened by widespread, uncontrolled infections.

With respect to future enforcement of this ordinance, the City Council recognizes that the Dover Police Department has limited resources and numerous responsibilities critical to public safety. The Dover City Council understands that the Dover Police Department must prioritize complaints regarding non-compliance with ordinances, such that some may have a lower priority for response and thus potentially experience a delayed response or follow-up. In enforcing and seeking compliance with this ordinance, the Police Department may receive a complaint solely as informational to identify future directed patrol areas and times, or may in its discretion resolve a complaint or violation as an opportunity to educate the public about the ordinance requirements and the importance of wearing face coverings.